

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 26 of 1984

in

SPECIAL CIVIL APPLICATION No 4302 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and

MR.JUSTICE C.K.BUCH

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

NATWARLAL ISHWARLAL PATEL

Versus

UNION OF INDIA

Appearance:

MR ANAND YAGNIK for MR. GIRISH PATEL for Appellant
MR SR SHAH for Respondent No. 1, 2, 3 (Absent)

CORAM : MR.JUSTICE B.C.PATEL and
MR.JUSTICE C.K.BUCH

Date of decision: 10/11/98

ORAL JUDGEMENT (Per Patel, J.)

The appellant, original petitioner, being aggrieved by the decision dated 13.1.1984 of learned Single Judge in Special Civil Application No. 4302 of 1983, has preferred this appeal.

2. The appellant who was prosecuted for offences under section 381, 411 and 414 read with section 114 of the Indian Penal Code and was convicted, moved this Court by invoking the extra ordinary jurisdiction of this Court under Article 226 of the Constitution of India. The appellant was serving as a Junior Engineer in Telephone Exchange, Kalol. Copper Wire, which was an essential commodity for the Exchange and which was costly, used to remain in charge of the petitioner. As theft was committed, a complaint was lodged and police filed charge sheet, on completion of the investigation. The trial Court came to the conclusion that the appellant is guilty and convicted and sentenced to undergo imprisonment for a period of three month and to pay a fine of Rs.1000/-, in default, to undergo two months' simple imprisonment. It seems that the appellant approached this Court by filing Special Civil Application interalia stating that the department is thinking of invoking the provisions of rule 10 (1) and 10 (2) (b) of the Central Civil Service Rules of 1965, [hereinafter referred to as the CCSR], which, according to the appellant, was not at all applicable.

3. In reply, one M.M. Patel, Assistant Manager, Staff & Administration filed an affidavit in reply on behalf of the Government of India pointing out that an order of suspension was passed in exercise of the powers under rule 10 of the CCSR based on the factum of conviction recorded by learned Judicial Magistrate, First Class, Kalol on 3rd September 1983 and an attempt was made to serve the order of suspension but the appellant declined to accept the order and proceeded on leave. It was further submitted that the appellant has not come with clean hands inasmuch as he refused to accept the order of suspension and has rushed to this Court.

4. Rule 10 (1) of the CCSR reads as under :-

"10(1). The appointing authority or any authority
..... may place a Government servant under
suspension :-

(a). where a disciplinary proceeding against
him is contemplated or is pending

(b). Where a case against him in respect of any criminal offence is under investigation, inquiry or trial

(2). The Government servant shall be deemed to have been placed under suspension by an order of appointing authority :-

(a). with effect from the date of his detention if he is detained in custody, whether on a criminal charge or otherwise, for a period exceeding forty-eight hours;

(b). With effect from the date of his conviction if in the event of conviction for an offence, he is sentenced to a term of imprisonment exceeding forty-eight hours and is not forthwith dismissed or removed or compulsorily retired consequent to such conviction.

5. The learned Single Judge pointed out in paragraph 2 of the judgment as under :-

"Technically speaking, it can be said that trial has come to an end, but the idea is that public services should not have on their roll people who are under the eclipse of reputation and that seems to be the obvious reason behind enacting the above mentioned clause. if that is the purpose, it should be understood to mean that if the man has been convicted he could be put under suspension."

6. This position is accepted by several decisions and learned advocate was not in a position to point out any infirmity in the order passed by the learned Single Judge. It was further submitted that there was no justification for suspension because from the date of the FIR, the appellant was permitted to continue in service. Learned Judge pointed out that "Justification or otherwise of an executive action or administrative action is not within the purview of this court's jurisdiction unless it is contrary to law or is fraught with malafides. If the authorities in their wisdom think that after being found guilty in respect of the property of which he was the trustee so to say, he should not be on the active roll of the authority, their action cannot be said in any way contrary to law".

7. In the instant case, a public servant who was in charge of a public property is found guilty of an offence of removal of property, i.e. theft, and when an order of suspension sought be to served on the public servant, the service is avoided and with an order of bail obtained by him from the Court, moved this Court. In our view, learned Single Judge, after considering the facts and law, has rightly dismissed the petition.

8. It is stated at the bar by the learned advocate for the appellant that the appellant, after some time from passing of the order, took voluntary retirement, and at present he is in the United States. Had the advocate for the respondent moved the Court for early hearing, the situation would have been quite different. From the record, we are not able to say that on behalf of the respondent any attempt was made to see that the matter is expedited or not.

9. In view of what is stated hereinabove, the appeal stands dismissed with cost.

10. In view of the aforesaid order passed in the appeal, Civil Application does not survive. Rule is discharged. Interim relief stands vacated.

csm./ -----